77-630

IN THE

Supreme Court of the United States

October Term 1977

No. 76-2373

NATIONAL BERYLLIA CORPORATION,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered on September 9, 1977.

Opinion Below

There was no opinion of the Court of Appeals for the Third Circuit. The order of the Court is reprinted in Appendix A hereto.

Jurisdiction

The judgment of the Court of Appeals was entered on September 9, 1977. This Court has jurisdiction to review the judgment by Writ of Certiorari under 28 U.S.C. § 1254(1).

Question Presented

Did the National Labor Relations Board violate Petitioner's due process rights by denying without a hearing the Petitioner's objections to a Board sponsored election which objections established, *prima facie*, union misconduct, and granting summary judgment for unfair labor practices against Petitioner for Petitioner's failure to bargain.

Statement of the Case

Petitioner seeks to reverse the decision of the Court of Appeals enforcing the order of respondent National Labor Relations Board to Petitioner to commence bargaining with Local 177, International Brotherhood of Teamsters (the "Teamsters" or the "Union") for a contract covering certain workers at petitioner's plant in Haskell, New Jersey.

Petitioner submits that pre-election misconduct by the Teamsters violative of this Court's ruling in *N.L.R.B.* v. *Savair Manufacturing Company*, 414 U.S. 270 (1973) required the Court of Appeals to dismiss the Board's application for enforcement of its bargaining order.

On December 11, 1974, a representation election was held among Petitioner's bargaining unit employees pursuant to a direction of election issued by the National Labor Relations Board, Twenty-second Region (the "Region") in which Petitioner, the Teamsters and an intervenor union participated.

On December 16, 1974, Petitioner timely filed objections as to pre-election conduct affecting the election results (A4)*. Objections 1 and 2 (A4) urged by Petitioner concerned representations made by the Teamsters that those

* Numbers in parentheses preceded by the letter "A" refer to the Appendix filed by the Board.

who signed Teamster authorization cards and/or aided the Teamster's organizing effort would be rewarded by a waiver of initiation fees amounting to $100-$150. This promise by the Teamsters as to waiver of initiation fees was echoed in a letter the Teamsters sent to the employees a day or two before the election which proclaimed that the waiver applied to those "considered part of a newly formed group." (A8)

Petitioner, in support of its election objections, provided the affidavits of two bargaining unit employees, Louis Macaluso and Elizabeth Gulino, and a Company official attesting that the employees were promised a waiver of initiation fees in exchange for their authorization cards and pre-election union support.

Mr. Macaluso stated that in September, 1974, Mr. Benale, Teamster general organizer, at a mass meeting of employees

> . . . promised me and other employees of National [Petitioner] that if we signed an authorization card for Local 177 before the election and/or became part of a newly formed group of new employees who supported Local 177 in its efforts to organize the employees of National, we would not have to pay the $100-$150 individual initial fee for Local 177. (A31(a)-A31(b)).

Mr. Macaluso also stated that this promise was repeated by Mr. Benale at "several subsequent meetings of National employees." (A31(b)).

Ms. Gulino stated in her affidavit that Mr. Benale at a mass meeting in August 1974, in urging the employees to sign authorization cards for Local 177, said:

> . . . that as part of a newly formed group of employees who supported Local 177 in its effort to

> organize the National employees, I would not have to pay the $100-$150 initiation fee at Local 177 . . . [and further] that those who signed cards before the election would become part of a new, or charter group, and could become a member of Local 177 without having to pay the initiation fee. . . . I then signed the authorization card. (A31(d)-A31(e)).

Ms. Gulino thus signed a union authorization card on the basis of Mr. Benale's representation that she would not have to pay the initiation fee.

The Regional Director issued its decision dated April 22, 1975 (A32) overruling Petitioner's objections and certifying the Teamsters as the collective bargaining representative of Petitioner's employees (A49). The Regional Director based his ruling on an investigation conducted pursuant to 29 C.F.R. § 102.69 (Series 8 of the Board's Rules and Regulations) (A34).

The ruling disclosed that the employee affiants had been "reinterviewed" and had recanted.* The Regional Director also relied upon, and quoted from, an affidavit by Teamster organizer Primo Benale (A36) and also gave weight in his decision to "random interviews" of unnamed and unnumbered employees (*ibid*) allegedly corroborating Benale.** The Regional Director ignored the promise of the waiver of initiation fees set forth in the Teamster letter. No hearing was held by the Regional Director to resolve the disputed issues of fact respecting the election objections.

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* The Regional Director quoted from his affidavits of these witnesses. (A13-15). However, the Board has refused to make these affidavits part of the Record.

** Neither the Benale affidavit nor the "random interviews" have been made a part of the record, and to this day, respondent has no idea of their contents other than what the Board has chosen to quote.

In reading the Regional Director's decision, Petitoner first discovered the existence of new affidavits from its employee witnesses. When Petitioner learned that Board investigators had coerced the employees to retract their affidavits, it obtained supplemental affidavits volunteered by the two employees (A60).

Ms. Gulino's third affidavit* disclosed that: the Board agent asked her if she knew the meaning of perjury (A77); he told her he "absolutely would not allow" her lawyer to review the statement she was told to sign (A81); she was confused by the agent's suggestion that if she had not previously quoted Mr. Benale's statements word for word in relating the promises that had been made at organizational meetings, then she must have lied (A80).

Ms. Gulino firmly adhered to her original statement (A80):

> Whatever the statement says, I am still sure that Mr. Benali [sic] said that as long as I was part of the group formed to organize at the plant I would be exempt from the initiation fees. This I told to the Board Agent, and it should be in the statement obtained from me by the Board Agent.

Ms. Gulino reaffirmed that it was on the basis of Mr. Benale's representations that she signed an authorization card (A80):

> After I signed the representation card handed out by Local 177, I thought that since my name would be on the list of the organized group, I would not have to pay the initiation fees.

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* Since these employees made out three affidavits each, they will be referred to as the first, second and third sets of affidavits, respectively.

Mr. Macaluso's third affidavit shows that the Board agent similarly badgered him with implied accusations of perjury (A85):

> As the Board Representative kept questioning me about paragraph 2 of my Affidavit, I felt he was trying to get me to contradict myself. Since I had in mind what he said about perjury, I then thought I had better say about Mr. Benali's [sic] statement about initiation fees, 'I think he said that, but I'm not positive.' By that I meant I wasn't absolutely sure that Mr. Benali [sic] had used those exact words. But I still was sure that the meaning was the same.

Mr. Macaluso also affirmed his first affidavit (A85):

> I am still sure that Mr. Benali [sic] said that as long as I was part of the group formed to organize at the plant I would be exempt from the initiation fees. I told this to the Board Representative, but I do not know whether he put it in the written statement he later asked me to sign.
>
> * * *
>
> Further, I am absolutely certain that Mr. Benali [sic] said that those eligible to vote would not have to pay initiation fees, and that he never said anything about a contract in the context of the initiation fees, or that they would be waived for everyone up until the time a contract between National and Local 177 was signed.

In addition to the above affidavits, Petitioner urged the Board in a memorandum that the Regional Director must in conformity with the law hold a hearing with respect to the disputed factual issues (A60, A70-71).

On June 25, 1975, the Board denied Petitioner's request for review because it "raised no substantial issues warranting review" (A88). A motion for reconsideration was also denied.

The Teamsters then demanded contract negotiations (A94-5). Petitioner responded that, in its view, the union had not been legally certified.

Petitioner's failure to bargain precipitated the unfair labor practice proceeding against Petitioner on September 19, 1975 (Charge, A2). On December 4, 1975 the Board General Counsel filed a motion for summary judgment on the unfair labor practice complaint. Petitioner opposed the summary judgment motion on the ground that since a *prima facie* case for overturning the election had been presented the Board had unjustifiably denied a hearing for the proper evaluation of issues of fact and credibility (A98-9). Nonetheless, the Board granted the motion for summary judgment stating that the due process issues had been considered fully in the underlying representation case. (A106)

The Board thereupon applied to the Court of Appeals for enforcement of its bargaining order pursuant to its unfair labor practices determination. The Court of Appeals granted the application without opinion.

REASONS FOR GRANTING THE WRIT

I. This Court Has Never Delineated The Obligation Of The Board To Hold A Hearing Respecting Substantial And Material Factual Issues In Representation Cases.

The Board's refusal to grant Petitioner a hearing when Petitioner presented *prima facie* evidence of union pre-election misconduct was an abuse of the Board's discretion and violative of Petitioner's due process rights.

The regulations controlling the Board's conduct under the National Labor Relations Act make an investigation into election abuse obligatory, 29 C.F.R. § 102.69(c). Section 102.69(d)* does allow for some discretion by the regional director in holding a hearing. Nevertheless, the rule set forth by the appellate courts mandates a hearing on disputed factual issues as to election misconduct. This rule is set forth in Davis, *Administrative Law Text*, § 702 (1972) at p. 159:

> Reviewing courts have considered many cases involving the NLRB's denial of a hearing on questions about representation. Gradually the law has crystallized that *trial-type hearings are required by due process on issues of fact upon which representation depends*, but not required in the absence of such issues. (Emphasis added.)

The Supreme Court has never considered whether due process considerations mandate such a hearing.

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* 29 C.F.R. § 102.69(d) states in pertinent part:

The action of the regional director . . . in issuing a decision on objection or challenged ballot or both, following proceedings under § 102.67, may be on the basis of an administrative investigation or, if it appears to the regional director that substantial and material factual issues exist which, in the exercise of his reasonable discretion, he determines may more appropriately be resolved after a hearing, he shall issue and cause to be served on the parties a notice of hearing on said issues before a hearing officer.

In *N.L.R.B.* v. *Joclin Manufacturing Company*, 314 F.2d 627 (2d Cir. 1963) the Second Circuit faced a situation similar to the instant one. There, an employee's ballot was challenged after the election by the Union. The Union claimed the employee was not a sufficiently regular employee to be entitled to vote. The court noted that the employer had made a *prima facie* showing of eligibility based on a substantial number of hours regularly worked (*id.* at 632) but that the Regional Director chose to give greater weight to evidence obtained in an *ex parte* investigation. The *ex parte* investigation consisted primarily of an interview with the employee in which he allegedly "told a Board Agent that he never took the job seriously; that when he was hired he was told it was part time and that they would use him if they needed him and would call him." *Id.* at 633. The Company, much as does Petitioner in the present case (*id.* at 633):

> . . . attacked the propriety of considering [the employee's] statements to the Board agent, and requested 'that the challenge should be overruled or that the substantial and material factual issues be resolved in a full hearing'.

The Court held that the Board's professed need for expeditious procedures did not outweigh the necessity of a hearing, as provided in the Board's own regulations, where there were disputed issues of fact (*ibid*):

> Recognizing that the need for expedition in certification matters justifies the Board in imposing 'reasonable conditions to the allowance of a hearing on objections', *N.L.R.B.* v. *O.K. Van Storage Inc.*, 297 F.2d 74, 76 (5 Cir., 1961), we think a case like Rosania's—an employee who was *prima facie* eligible and is sought to be disqualified because of develop-

ments after the election and an alleged mental attitude disclosed in a private interview with a Board agent—comes squarely within the Board's Regulations and requires a hearing upon the Company's request.

The Court noted that while the language contained in 29 C.F.R. §102.69(d) provides that "the Board may direct" a hearing "if it appears to the Board that such exceptions raise substantial and material factual issues" (*ibid*), such language does not confer broad latitude on the Board to hold or not hold a hearing in particular cases if the issues are "substantial" and "material" (*ibid*):

> The Board properly has not contended either that the Regulations' use of the phrase 'appears to the Board' makes the determination conclusive, see *United States* v. *Laughlin*, 249 U.S. 440, 39 S.Ct. 340 63 L.Ed. 696 (1919), or that their use of the verb 'may' gives it an unfettered discretion to grant or deny a hearing. . . .

Thus the Court in *Joclin* agreed with the holding in *N.L.R.B.* v. *Sidran*, 181 F.2d 671 (5th Cir. 1950) and held that a Regional Director's unilateral resolution of disputed factual issues without a hearing was a violation of the employer's constitutional right to a fair hearing (314 F.2d at 631):

> In *N.L.R.B.* v. *Sidran*, 181 F.2d 671, 673 (5 Cir., 1950), the Board accepted a Regional Director's election report which determined disputed issues of voter eligibility on the basis of an *ex parte* investigation, without giving the employer an 'opportunity to be heard, to examine and cross-examine witnesses, or to produce any evidence in his own behalf which might have tended to impeach or contradict the facts

> found by the Regional Director as to the status of these challenged employees.' The court held that such action deprived the employer of his constitutional right to a fair hearing, and invalidated the Board's finding that he had committed an unfair labor practice in refusing to bargain with the certified union.

The Fifth Circuit has followed the Second Circuit's holding in *Joclin*. In *United States Rubber Company* v. *N.L.R.B.*, 373 F.2d 602 (5th Cir. 1967), the Board unilaterally resolved factual issues after an investigation of the employer's objections to a certification election. The objections of the employer focused on an eleventh-hour letter written to the employees by the union asserting that the wage rates and working conditions of a competitor's employees (represented by the same union) were markedly superior. The Board thereafter sought to enforce an order issued as a result of the employer's refusal to bargain.

The employer submitted "sworn objections [which] stated in detail respects in which statements in the letter . . . were claimed to be false." 373 F.2d at 605.

The Board claimed that its *ex parte* investigation, including an interview with the office manager of the competing firm, gathered evidence sufficient to conclude, without a hearing, that the representations in the union letter as to superior working conditions were not materially misleading. Like Petitioner, the employer in *United States Rubber* "at subsequent stages . . . submitted affidavits" challenging the integrity of the information obtained in the Board interview. *Id.* at 606.

The Court held that since there were substantial and material issues, the Board had denied the company due process and had acted arbitrarily and unreasonably:

> It is our opinion that the Board has acted arbitrarily and unreasonably. In the representation proceeding it should not have ruled on the employer's objections to the election without a hearing, for there were substantial and material issues which could be determined properly only by a hearing. *Id.* at 604.

Accord: *N.L.R.B.* v. *Bata Shoe Company,* 377 F.2d 821, 825 (4th Cir.), *cert. denied* 389 U.S. 898 (1967)

The Court in *United States Rubber* also considered what an employer must show to entitle it to a hearing on election objections. The court held that a hearing was required on evidence which *prima facie* would warrant the setting aside of an election (at 606):

> To be entitled to a hearing the objector must supply the Board with specific evidence which prima facie would warrant setting aside the election, for it is not up to the Board staff to seek out evidence that would warrant setting aside the election . . . [Citations omitted] Just how specific must the evidence be to meet the standard? Here the objections were not 'nebulous and declaratory assertions, wholly unspecified,' nor equivocal hearsay, but clearly put in issue the correctness of what was said in the letter—this was 'specific evidence of specific events from or about specific people.'

The duty of the Regional Director to hold a hearing when confronted with a case involving *bona fide* disputes of fact on material post-election objections was reaffirmed in

N.L.R.B. v. *Capital Bakers, Inc.,* 351 F.2d 45 (3rd Cir. 1965). There, as here, the Board overrode the employer's post-election objections on the basis of a unilateral investigation without a hearing. The court held that the Regional Director was without discretion to deny the employer a hearing in light of substantial and material questions of fact. The court in *Capital Bakers* noted that where the question is whether a hearing should have been held, the decisive issue is not whether there was ample evidence to support the conclusion drawn by the Regional Director, but whether there was at least some probative evidence marshalled on the other side (*id.* at p. 51):

> We are not concerned with the question of whether or not the evidence considered by the Regional Director is sufficient to support his finding, or whether the rejected evidence of respondent would overcome the findings; we are solely concerned with the fact that *the offer and findings raise a substantial conflict of fact which the Board's Rules and Regulations require to be determined by a hearing.* (Emphasis added.)

The court made it clear that a hearing could not be denied the employer on the theory that the issue was properly addressed in the first proceeding:

> Respondent requested an opportunity to have these facts determined by a hearing. This was denied, and its subsequent request to the Board for hearing was denied. The nature of the evidence which respondent wished to present is revealed both in its Request for Review and in its offer of proof before the Trial Examiner on the unfair labor practice proceeding. The respondent there set forth in detail several factual matters which it offered to

> prove to contradict facts found by the examiner in his report based on ex parte investigation. . . . *If this* [the presence of a substantial conflict of fact] *was not apparent to the Board at any prior stage it became clearly apparent at the Trial Examiner's hearing. The circumstances compelled a hearing at the very least, at this stage.* (Emphasis added.)

As in *Capital Bakers*, the error here of the Regional Director in refusing to hold a hearing was compounded in each succeeding level of determination that presumed the validity of the underlying certification proceedings.

The Ninth Circuit has gone beyond the holdings of the Second, Third, Fourth and Fifth Circuits in requiring a hearing respecting election objections. In *N.L.R.B.* v. *Ames Co.*, 450 F.2d 1209 (9th Cir. 1971), employee affidavits submitted by the employer contradicted the *ex parte findings* of the Regional Director. The Court held that even if the employer's objections, on their face, would not warrant setting aside the election, a hearing is required.

In granting the application of the N.L.R.B. for enforcement of its bargaining order in this case, the Third Circuit has contradicted the uniform rulings of the other Circuits and its own decision in *Capital Bakers*. We submit that the Supreme Court should now determine whether due process considerations compel a hearing respecting disputed and material factual issues as to pre-election misconduct.

II. This Important Question Was Wrongly Decided Below.

The Third Circuit's decision enforcing the N.L.R.B.'s bargaining order ignored the *prima facie* demonstration by Petitioner that the Teamster's pre-election conduct violated

the ban on waiver of initiation fees set forth in this Court's holding in *N.L.R.B.* v. *Savair Manufacturing Company*, 414 U.S. 270 (1973). As explained in Part I, it has been the consistent ruling by the courts of appeal which have considered the question that a *prima facie* demonstration of pre-election misconduct entitles Petitioner to a hearing on its objections. Here, since a *prima facie* demonstration was made, the Third Circuit at least should have denied the N.L.R.B.'s application for enforcement and remanded for a hearing on Petitioner's objections.

In *N.L.R.B.* v *Savair Manufacturing Company*, this Court enunciated the rule that a promise of a waiver of initiation fees to employees who sign union authorization cards prior to the election invalidates the election:

> Whatever his true intention, an employee who signs a recognition slip prior to an election is indicating to other workers that he supports the Union. His outward manifestation of support must often serve as a useful campaign tool in the Union's hands to convince other employees to vote for the Union, if only because many employees request their coworkers' views of the unionization issue. By permitting the Union to offer to waive an initiation fee for those employees signing a recognition slip prior to the election, the Board allows the Union to buy endorsements and paint a false portrait of employee support during its election campaign.
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> • • •
>
> We do not believe that the statutory policy of fair elections prescribed in the *Tower* case permits endorsements, whether for or against the Union, to be bought and sold in this fashion. (*Id.* at 277)

Clearly, *Savair* prohibits the Teamsters' pre-election promise to waive initiation fees as an inducement to sign authorization cards and for other support during the pre-election campaign. The affidavits submitted on behalf of the Company plainly establish that the Teamsters engaged in the prohibited conduct. As both Gulino and Macaluso stated in their first affidavits, the Teamsters promised to waive the initiation fees for those employees in the "newly formed group." The affidavits of these employees state that the Teamsters defined "newly formed group" to mean those workers who supported the Union's pre-election organizing drive and signed authorization cards.

The promise to waive initiation fees was reiterated in the Union's eleventh hour campaign letter to the employees (A-8).

In her first affidavit, Ms. Gulino also referred to the Union's promise to waive initiation fees for those employees who were part of a charter group. It is clear from Ms. Gulino's affidavit that the members of a charter group would be those employees who signed authorization cards before the election (at A31(e)):

> He further stated that all those who signed cards before the election would become part of a new or charter group and could become a member of Local 177 without having to pay the initiation fee.

Even if the Teamsters had left the terms "newly formed group" or "charter group" undefined, its interpretation by the employees would require a holding that the *Savair* rule was violated or that a hearing on Petitioner's objections was necessary. In *Inland Shoe Manufacturing Co., Inc.*, 86 L.R.R.M. 1498 (1974), the Board overturned an election on the basis that the employees "could reasonably have concluded that it was to their benefit to join Petitioner before the election . . . to avoid the possibility of having to pay initiation fees later." As is clear from Ms. Gulino's first and third affidavits, she concluded that it was to her benefit to join the Union in order to avoid payment of the initiation fees.

Moreover, use of the undefined phrase "charter membership" was held to be improper by the Board under the *Savair* rule in *D.A.B. Industries, Inc. and International Union, Allied Industrial Workers of America, AFL-CIO*. 87 L.R.R.M. 1738 (1974). There, a Board panel held unlawful an initiation fee waiver contingent on charter membership in the Union, even though dues were waived for everyone until a contract was negotiated and ratified (*id.* at 1739). Similarly, in *Coleman Company, Inc. and Viola Clark*, 87 L.R.R.M. 1004 (1974), the Board held that a promise to waive initiation fees for those employees making application for "charter membership" violated *Savair*. There is no meaningful distinction between the terms "charter group" or "newly formed group" as used by the Teamsters in its campaign and "charter membership" which *D.A.B. Industries, Inc.* and *Coleman Company, Inc.* held illegal.

In another Board case, *Rounsaville of Tampa, Inc. and Teamster, Local 79*, 92 L.R.R.M. 1344 (1976), the Board directed a hearing to resolve the ambiguity of the union's term "future members" to whom its initiation fee waiver did *not* apply. In a letter the union had informed the employees that "[t]here is an initiation fee, for future members, why deny the truth" (*id.* at 1345) and failed to define or otherwise explain in the letter who belonged to the group composed of "future members".

Petitioner has made out a *prima facie* demonstration of pre-election misconduct and is entitled to a hearing. Team-

ster organizer Benale's partisan claim that the union's past policy was to waive initiation fees for all employees during an organizational drive is irrelevant. As the Board panel stated in *D.A.B. Industries* (*id.* at 1739):

> That it has been Petitioner's past practice to waive initiation fees for those employed when Petitioner obtains a contract with the employer in no way serves to remove or clarify this ambiguity. For apart from the absence of evidence of employee awareness of such a past practice, it would be difficult for employees to reconcile the past practice with the front side of the card's conditioning waiver upon "charter membership" and the reverse side's assurance of "No Initiation Fee." Evidence of past practice thus not only fails to resolve the ambiguity but adds to the confusion.

Nor do the contradictory employee affidavits refute Petitioner's *prima facie* showing of pre-election misconduct. As the Third Circuit itself pointed out in *Capital Bakers, supra,* a hearing would be required on the basis of any probative evidence submitted by Petitioner. Such evidence is contained in the first and third affidavits of Petitioner's employees and the Teamster letter.

Indeed, that the employees contradicted themselves in their second affidavits indicates the need for a hearing. As the Fifth Circuit recently stated in *Modica* v. *United States*, 518 F.2d 374, 376 (5th Cir. 1975), a sworn denial of previous admissions "ordinarily creates an issue of disputed fact. . . ." Here, Board investigators coerced Petitioner's employees to retract their prior affidavits in an apparent attempt to prevent Petitioner from making a *prima facie* showing of pre-election misconduct. The employees were

accused of lying. They were forced to sign affidavits without being allowed to consult their lawyer despite their requests to do so. Moreover, the affidavits did not reflect their true testimony. In short, Petitioner's employees were forced to sign affidavits which conflicted with their prior affidavits under conditions supposedly prohibited by the Constitution and Bill of Rights. A hearing is thus needed to determine whether the prohibited Teamster conduct set forth in the first and third affidavits in fact occurred. A hearing is also needed so that the testimony of the witnesses may be obtained unfettered by the coersive conduct of supposedly impartial Board investigators.

CONCLUSION

For the reasons stated, the Petition for Certiorari should be granted.

Respectfully submitted,

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Judgment Order

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 76-2373

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

NATIONAL BERYLLIA CORPORATION,

Respondent.

(Board No. 22-CA-6543)

On Application for Enforcement of an Order of the National Labor Relations Board.

Submitted Under Third Circuit Rule 12(6)
September 7, 1977

Before:

SEITZ, *Chief Judge,*
GIBBONS AND WEIS, *Circuit Judges.*

On the Application of the National Labor Relations Board for enforcement of its order dated March 5, 1976,

It is ORDERED, ADJUDGED and DECREED that the Application for enforcement is granted and the order dated March 5, 1976 be and is hereby enforced. Costs shall be taxed against Respondent.

By the Court,

COLLINS J. SEITZ
Chief Judge

Attest:
THOMAS F. QUINN,
Thomas F. Quinn,
Clerk

Dated: Sep. 9, 1977